IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9400 of 1999

For Approval and Signature:

Hon'ble HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRITKUMAR BAPALAL DATANIA

Versus

GUJARAT SMALL INDUSTRIES CORPN

Appearance:

1. Special Civil Application No. 9400 of 1999

MR TR MISHRA for Petitioner No. 1

MR PV HATHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 26/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. T.R.Mishra for the petitioner and Mr. P.V.Hathi appearing on behalf of the respondent.

2. Rule has been issued by this Court on 1.12.1999. Affidavit-in-reply has been filed by the respondent.

3. The grievance of the petitioner is that while granting the benefit of VRS to the petitioner, the benefit from the initial date of appointment of the petitioner has not been granted though services of the petitioner was remained continuous and uninterrupted without any break. According to the petitioner, he was appointed as Junior Clerk on 21.8.1979 and he was again appointed as Senior Assistant on being selected as such from 13.1.1992, after obtaining resignation letter. After introducing VRS, the petitioner submitted the application accepting the same. However, his terminal benefits were granted counting the service from January, 1992 and not from 1979, though gratuity, PF and Leave etc. have been granted from 1979. Therefore, the petitioner is entitled for the benefit of VRS from 1979.

4. Learned advocate Mr. P.V.Hathi appearing on behalf of the respondent has submitted that present petitioner has tendered his resignation on 13.1.1992 to the GSIC Ltd. wherein the request is made to waive the notice period and also carry forward the leave balance and also gratuity and PF amount. This request was accepted by the respondent and accordingly the benefit has been granted to the petitioner from 1979 from the initial date of appointment. But in respect to the continuity of service, learned advocate Mr. Hathi has submitted that respondent has issued fresh appointment order after selection on 10.1.1992 without continuity of any past service and appointed to the petitioner on probation for a period of one year. Therefore, Mr. Hathi has submitted that this being fresh appointment without any continuity of earlier service it was accepted by the petitioner and now for getting VRS benefit from the initial date of appointment in the year 1979, present petition has been filed by the petitioner.

5. I have considered the submissions made by both the learned advocates and considered the averments made in the petition as well as in the reply. Looking to the appointment order which suggest that it was a fresh appointment without any continuity of past service, which has been accepted by the petitioner without any objection. In respect to the benefit of leave balance, Gratuity and PF, specific request was made by the petitioner to the Managing Director, GSIC Ltd. by letter dated 13.1.1992 which has been accepted and accordingly, the said benefits have been paid from 1979 and the VRS

benefit has been paid from the date of appointment in 1992. Therefore, considering these two letters, according to my opinion, the benefit of VRS which has been paid by the respondent w.e.f. 13.1.1992 is legal and valid. There is no illegality committed by the respondents. Therefore, there is no substance in the present petition, present petition is dismissed with no order as to costs. Rule is discharged.

(H.K.Rathod,J)

Jayanti*